

**REMARKS**

With the addition of new claims 30 to 32, claims 10 to 32 are pending in the present application. It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Claims 12, 14 to 16, 18, and 29 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,516,278 (“Ishizaki et al.”), in view of U.S. Patent No. 6,678,599 (“Eisele et al.”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied.

First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396.

Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986).

Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 12 relates to a device for activating an actuator system for protecting a pedestrian, comprising, in relevant part, *an arrangement for comparing the first signal to a noise threshold to ascertain a starting point for the first comparison; and an arrangement for determining a starting point for the first comparison from a third signal of the environment sensor system.*

The Office Action admits that Ishizaki et al. do not disclose all of the features of claim 12. Specifically, “Ishizaki does not specifically disclose an arrangement for

comparing the first signal to a noise threshold and determining a starting point.” (Office Action, p. 3).

The Office Action, at page 3, instead refers to column 1, lines 37-61 and 58-67 of Eisele et al. as assertedly disclosing these features. However, Eisele et al. merely indicate that, at method step 17, a processor 4 performs a comparison of calculated feature values with threshold value functions in order to determine a deployment case for restraint devices. Thereafter, at method step 18, a deployment time for the restraint devices is calculated. (Eisele et al., col. 1, lines 42 to 43; col. 5, lines 21 to 30; col. 6, lines 34 to 40; and Figure 2). Thus, Eisele et al. merely indicate calculating a deployment time for restraint devices, which is not analogous to determining a starting point for the first comparison.

Indeed, the method steps 17 and 18 of Eisele et al. make plain that the comparison is performed before a deployment time is calculated. In this regard, Eisele et al. state that “[d]eployment case or nondeployment case in this stage of decision-making regarding airbag deployment is not a question of whether or not deployment is necessary for the crash in question in general, but instead it is assumed in this case that fundamentally the airbag is to be deployed for the given crash case.” (Eisele et al., col. 6, lines 46 to 51). Thus, this section of Eisele et al. makes clear that the comparison of method step 17 occurs prior to method step 18, and method step 18 merely subsequently determines an airbag deployment time.

Therefore, the combination of Ishizaki et al. and Eisele et al. do not disclose (or suggest) the features of *an arrangement for comparing the first signal to a noise threshold to ascertain a starting point for the first comparison*; and *an arrangement for determining a starting point for the first comparison from a third signal of the environment sensor system*, as provided for in the context of claim 12.

Accordingly, the combination of Ishizaki et al. and Eisele et al. does not disclose or suggest all of the features of claim 12, so that the combination of Ishizaki et al. and Eisele et al. does not render unpatentable claim 12 or any of its dependent claims, 14 to 16 and 18. Indeed, the Examiner previously admitted, in the Office Action of July 29, 2008, that the combination of Ishizaki et al. and Eisele et al. does not render claim 12 (or its dependent claims) unpatentable.

Claim 29 includes features similar to those of claim 12. Accordingly, it is respectfully submitted that claim 29 is allowable for at least essentially the same reasons provided above in support of the patentability of claim 12.

Withdrawal of this obviousness rejection of claims 12, 14 to 16, 18, and 29 is therefore respectfully requested.

Claims 10, 11, 13, 17, and 19 to 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ishizaki et al., in view of Eisele et al., and further in view of U.S. Patent No. 6,271,747 (“Fendt et al.”).

Claim 13 relates to a device for activating an actuator system for protecting a pedestrian, comprising, in relevant part, *an arrangement for changing the threshold in response to passage of a predetermined amount of time.*

The Office Action admits that Ishizaki et al. and Eisele et al. do not disclose all of the features of claim 13. Specifically, “[n]either Ishizaki nor Eisele specifically disclose an arrangement for changing a threshold as a function of time.” (Office Action, p. 4).

The Office Action instead asserts that Fendt et al. cure this critical deficiency of Ishizaki et al. and Eisele et al. However, Fendt et al. merely indicate lowering a trigger threshold based on a received crash signal. Specifically, Fendt et al. state that “the rising edge RE of the crash signal S2 is used for controlling the lowering of the trigger threshold to TL.” (Fendt et al., col. 5, lines 5 to 7). In addition, Fendt et al. refer to a time limit  $T_{MAX}$  within which to receive the crash signal S2 for lowering the trigger threshold. (Fendt et al., col. 4, lines 56 to 61; and col. 5, lines 21 to 25). However, the trigger threshold of Fendt et al. is not changed as a function of the time limit  $T_{MAX}$ , but instead is changed when a crash signal S2 is received. Moreover, nowhere do Fendt et al. disclose or suggest changing a threshold in response to passage of a predetermined amount of time. That is, no change to a threshold occurs with passage of time. Instead, change occurs as a function of a crash signal as long as the crash signal is obtained prior to expiry of a time limit.

Accordingly, the combination of Ishizaki et al., Eisele et al., and Fendt et al. does not disclose or suggest all of the features of claim 13, so that the combination of Ishizaki et al., Eisele et al., and Fendt et al. does not render unpatentable claim 13 or any of its dependent claims 10, 11, 17, and 19 to 28.

Withdrawal of this obviousness rejection of claims 10, 11, 13, 17, and 19 to 28 is therefore respectfully requested.

New claims 30 to 32 have been added. Claims 30 to 32 do not add any new matter and are supported by the application, including specification, as originally filed. Claim 30 depends from claim 13 and is therefore allowable for at least the same reasons as claim 13. Claim 31 relates to a device for activating an actuator system for protecting a

pedestrian and provides that the threshold is changed as a function of an impact time predicted based on the second signal.. The cited references do not disclose or suggest this feature. Claim 32 depends from claim 31 and is therefore allowable for at least the same reasons as claim 31.

Accordingly, all of pending claims 10 to 32 are allowable.

**Conclusion**

In view of the foregoing, it is respectfully submitted that all of pending claims 10 to 32 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Dated: May 18, 2009

Respectfully submitted,  
/Aaron Grunberger/  
By: Aaron Grunberger (Reg. No. 59,210) for:  
Gerard A. Messina  
Reg. No. 35,952

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

**CUSTOMER NO 26646**